

Resolution No.: 16-519
Introduced: April 22, 2008
Adopted: April 22, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-874 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, David D. Freishtat, Esquire and Anne Marie Vassallo, Esquire, Attorneys for Applicant David Rever, OPINION AND RESOLUTION ON APPLICATION

Tax Account No. 05-00276026

OPINION

Application No. G-874, filed on October 1, 2007 by Applicant David Rever, requests reclassification from the R-200 Zone to the O-M Zone of 29,893 square feet (0.68 acres) of land known as Lot 1 of the Rhodes Addition to Fairland Subdivision, located at 13915 Old Columbia Pike, Silver Spring, Maryland, in the 5th Election District. This Site is located on the east side of Old Columbia Pike, just north of Briggs Chaney Road, in the 5th Election District. The application was submitted by the owner under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, development standards and staging. Such limitations are shown on a Schematic Development Plan that is submitted with the application, and must be repeated in covenants to be filed in the county land records. There has been no opposition to this application.

The Hearing Examiner recommended approval of the application on the basis that the O-M Zone at the proposed location would satisfy the requirements and purpose clause of the O-M Zone; that the proposed reclassification and development would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with the Hearing

Examiner's conclusions and incorporates herein the Hearing Examiner's Report and Recommendation dated April 2, 2008.

The subject property, 13915 Old Columbia Pike, Silver Spring, is a single lot (Lot 1 of the Rhodes Addition to Fairland Subdivision) with an area of 29,893 square feet (0.68 acres). The lot is rectangular in shape and is located on the northeast quadrant of the intersection of Old Columbia Pike and Briggs Chaney Road, immediately to the west of the Maryland Route 29 off ramp. The property has approximately 107 feet of street frontage along Old Columbia Pike, and a 1,435 square foot single-family home, with a concrete driveway, sits on the site. Old Columbia Pike is a two-lane residential primary street, with a sidewalk along the property frontage, and Briggs Chaney Road is a four-lane, divided, east-west arterial roadway. The topography of the site reflects an approximately 24-foot decrease in grade, from 454 feet above sea level at the property's Old Columbia Pike street frontage to 430 feet at the property's rear lot line. The home is now being used as a residence and a dental practice.

The O-M Zone is a floating zone, and evaluation of the zoning issues requires delineation of a surrounding area. In general, the defined surrounding area takes into account those areas which are most directly affected by the proposed development, and any special study areas which may have been defined by a master or sector plan. In this case, the designated surrounding area is bounded by Hollyhock Drive and the northern property line of Paint Branch High School to the north, Columbia Pike (US 29) to the east, Martello Drive to the south, and the Upper Paint Branch Stream Valley Buffer to the west

The land use and zoning pattern of the defined surrounding area reflect a mix of residential, institutional and commercial uses. Abutting the subject property to the north are single-family detached homes in the R-200 Zone, although it should be noted that another rezoning application (G-848, filed by Olympus Real Estate Group, LLC) is pending, and it seeks to rezone the three lots immediately to the north (Lots 232, 200, & 146) to allow townhouse development (RT-8). Further north, approximately

1000 feet from the subject property, is Paint Branch High School. To the immediate west, across Old Columbia Pike, is the Burtonsville Fire Station. Further to the west are single family homes in the R-200 Zone. Diagonally to the southwest, across the intersection of Briggs Chaney Road and Old Columbia Pike, is a commercial shopping center in the C-1 Zone that contains, *inter alia*, a Pizza Hut restaurant, a 7-11 convenience store, and a beer & wine shop. To the immediate south of the subject property is a portion of a vacant lot held by the State of Maryland (Department of Transportation), and further south, across Briggs Chaney Road, lies the Avonshire community, an existing townhouse development in the RT-12.5 zone.

The subject property was placed in the R-R Zone with the enactment of the 1954 comprehensive zoning of the area. Local Map Amendment Application E-990, filed in 1966 to rezone to the C-1 or C-2 Zone, was denied. In 1982, Sectional Map Amendment G-337 rezoned the land from the R-R Zone to the R-200 Zone. In 1997, the Upper Paint Branch Environmental Overlay Zone was placed upon a 525 square foot triangular portion of the northwest corner of the site by Sectional Map Amendment G-747. However, the Department of Permitting Services (DPS) found that “no portion of the subject property is within the Upper Pant Branch Special Protection Area (SPA) . . . [because t]he entire property appears to drain away from the SPA.” Exhibit 31(j). The actual drainage divide is shown on the Schematic Development Plan (SDP). The site has no streams, wetlands, floodplains or forested areas, although there are three specimen trees on the property.

If the rezoning is approved, the plan is to demolish the current building and build another structure which will house Dr. Rever’s dental practice and some additional medical or general offices. The new structure will not serve as a residence. Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the “optional method” of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those

elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements shown on the SDP limit the use of the site as follows:

1. Building cover will not exceed 20% of the Gross Tract Area.
2. Building height will not exceed 36 feet.
3. The Floor Area Ratio (FAR) will not exceed 0.32.

The third binding element, limiting the FAR to 0.32 effectively limits the floor space in the building to 9,600 square feet, since the lot size is 29,893 square feet (*i.e.*, $9,600 / 29,893 = 0.32$). The limitations imposed by the Binding Elements will result in a smaller building and less intense use than permitted generally in the O-M Zone. Similarly, the proposal calls for an office building measuring only 36 feet in height and covering only 20 percent of the lot, notwithstanding that the O-M Zone potentially allows up to 60 feet in building height and 60 percent building coverage on a lot. These self-imposed limitations were designed to keep the building scale compatible with other properties in the immediate area. Technical Staff, the Planning Board and the Hearing Examiner all agree that the Binding Elements will achieve that end in this case, and the District Council so finds. A final executed copy of the Declaration of Covenants containing the Binding Elements has been filed in the record as Exhibit 31(a).

The property will have a single point of access, an existing concrete driveway. The precise location of the building on the site, as well as the location of the parking, will be determined at site plan.

The plan is to have 31 parking spaces on site, but the precise number will be determined by the Planning Board at site plan.

A floating zone is a flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development. The new zone must also be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

Montgomery County has many floating zones, including the O-M Zone. The O-M Zone contains development standards and a post-zoning review process that generally delegate to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening.

We turn now to the three areas of review discussed above, the purpose and requirements of the zone, compatibility with land uses in the surrounding area, and relationship to the public interest.

The purpose clause for the O-M Zone, Zoning Ordinance §59-C-4.310, provides:

It is the purpose of the O-M zone to provide locations for moderate-intensity office buildings in areas outside of central business districts. It is intended that the O-M zone be located in areas where high-intensity uses are not appropriate, but where moderate intensity office buildings will not have an adverse impact on the adjoining neighborhood. This zone is not intended for use in areas which are predominantly one-family residential in character.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

The first and second criteria are clearly met in this case because the subject site is located outside of a central business district and is in a residential/light commercial/institutional area where high intensity uses would not be appropriate. As to the third criterion, Technical Staff, the Planning Board and the Hearing Examiner all agree that a moderate-intensity office building will not have an adverse impact on the adjoining neighborhood, especially given the limits on intensity of the use contained in the Binding Elements. The Binding Elements restrict building coverage to 20%, though 60% is permitted in the O-M Zone; restrict height to 36 feet, though 60 feet is permitted; and restrict density to 0.32 FAR though 1.5 FAR is permitted. Moreover, the site is located along three major roads, and is directly across from a fire house and a shopping center, which render the immediate area predominantly commercial/institutional, rather than single-family residential, in spite of its current zoning. In sum, the proposed rezoning will satisfy the four requirements of the purpose clause.

The development standards for the O-M Zone are spelled out in *Zoning Code* Sections 59-C-4.311 through 314. Applicant's compliance with these standards was shown by Technical Staff in a Table which was reproduced on pages 30-31 of the Hearing Examiner's report and recommendation. As is evident, the application meets all the specific requirements of the O-M Zone. Moreover, in addition to the local map amendment procedures, the proposed use of the subject property will require a later approval of a site plan by the Montgomery County Planning Board, as set forth in Division 59-D-3 of the Zoning Ordinance.

Compatibility has generally been evaluated in terms of land use, density, height and bulk. The evidence indicates that the proposed use will be compatible with existing and planned development within the surrounding area. The property is currently being used as a dental office, as recognized by the Fairland Master Plan. The proposed use would be compatible because, as noted above, uses in the immediate neighborhood are primarily multi-family, institutional and commercial. Land use

compatibility for the intended dental practice and small office use is further evidenced by the Master Plan's call for "Single practitioners and small-scale office uses" in the area (Page 65).

The proposed use would be compatible with the single-family residences because a minimum amount of traffic would be generated by the use; it would be a very low intensity use as a commercial office building; and it would be a good transitional use between the single-family residences and the more intense development to the south and west. The density, height and bulk of the proposed use have all been severely limited by the binding elements. The District Council agrees with Technical Staff's express finding that "an office building at this moderate size and scale is appropriate for the site and is not detrimental to the surrounding area." Exhibit 22, p. 9.

Based on this record, the District Council finds that the proposed use would be compatible with the surrounding area.

Maryland law requires that any rezoning be in the public interest. Factors which are usually considered in determining the public interest include Master Plan conformity, the recommendations of the Planning Board and its staff and possible adverse effects on the surrounding area, public facilities and the environment.

For the reasons discussed in Part III. E. of the Hearing Examiner's report, the proposed rezoning is consistent with the Fairland Master Plan, approved and adopted in 1997. The Master Plan encourages:

"compatible and transitional land uses between retail and residential uses. . . . There are few medical offices or professional services in the immediate area. Single practitioners and small-scale office uses ... may be appropriate to serve the residential communities. [Master Plan, p. 65]"

Compliance with Master Plan recommendations is not mandatory in this case because the O-M Zone does not require it; rather, the courts have held that the Master Plan should be treated only as a guide in rezoning cases like this one. See *Richmarr Holly Hills, Inc. v. American PCS, L. P.*, 117 Md.

App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). Nevertheless, Technical Staff, the Planning Board and the Hearing Examiner all agree that the proposed development would be consistent with the recommendations of the Fairland Master Plan. Accordingly, the District Council concludes that the rezoning will be consistent with the 1997 Fairland Master Plan.

The Transportation Planning staff reviewed the rezoning application and found it reasonably probable that it will meet all requirements of Local Area Transportation Review when the adequacy of public facilities is determined at site plan review. Based on the application of appropriate trip generation rates, the proposed use will generate fewer than 30 weekday peak-hour trips, and therefore a detailed traffic study is not needed. Policy Area Mobility Review (PAMR) does not apply to this application because it was filed on October 1, 2007, prior to the effective date (November 15, 2007) of the 2007-2009 Growth Policy which first adopted PAMR. *See* Zoning Text Amendment (ZTA) 07-17 (Ordinance No. 16-14, effective March 17, 2008). The record also supports the conclusion that other public facilities will not be adversely affected by the proposed use, and that the site would have safe and efficient access for both vehicular and pedestrian traffic.

As to environmental issues, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject property, and an exemption from the County's Forest Conservation Law was granted, subject to a Tree Save Plan which has also been filed.

A stormwater management concept plan was filed with Technical Staff and the Department of Permitting Services (DPS). It has not yet been approved by DPS, but it has been revised in accordance with DPS instructions, and Technical Staff anticipated no problems. Thus, the evidence indicates that the proposed zoning will not likely have an adverse impact on public facilities or the environment, and the District Council so finds.

In sum, the proposed use will not adversely affect surrounding development, is consistent with the goals of the Master Plan, will continue to provide a useful health service to the community, will not


adversely affect public facilities or the environment and has been approved by Technical Staff and the Planning Board. The District Council therefore finds that its approval would be in the public interest. For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-874, seeking reclassification from the R-200 Zone to the O-M Zone of 29,893 square feet (0.68 acres) of land known as Lot 1 of the Rhodes Addition to Fairland Subdivision, located at 13915 Old Columbia Pike, Silver Spring, Maryland, in the 5th Election District, is hereby approved in the amount requested, subject to the specifications and requirements of the approved schematic development plan, Exhibit 33(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved Schematic Development Plan, in accordance with §59-D-1.64, and provided that the Declaration of Covenants (Exhibit 31(a)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council